

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL CEVALLOS,

Plaintiff,

v.

OFFICE OF COUNTY COUNSEL, et al.,

Defendants.

Case No. 15-cv-01801-EDL

**ORDER DISMISSING COMPLAINT
WITH PREJUDICE**

Re: Dkt. No. 9

Plaintiff Michael Cevallos filed his complaint and Application to Proceed In Forma Pauperis (“IFP Application”) on April 21, 2015. On April 24, 2015, this Court GRANTED Plaintiff’s IFP Application but reserved its determination of compliance with 28 U.S.C. § 1915(e)(2)(B). On April 30, 2015, Plaintiff consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c).¹ On May 7, 2015, this Court dismissed the complaint with leave to amend, noting that “Plaintiff’s complaint does not make any clear claims against any Defendant and is largely unintelligible” and instructing Plaintiff that any amended complaint “should clearly state Plaintiff’s factual allegations and make it plain which allegations and causes of action relate to which defendants.” (Dkt. 7 at 2.) On May 27, 2015, Plaintiff filed an amended complaint. For the reasons set forth below, Plaintiff’s amended complaint is dismissed with prejudice.

Under 28 U.S.C. § 1915(a), “[a]ny court of the United States may authorize the commencement . . . of any suit . . . without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor.” The

¹ To the extent that this order is dispositive, the Court does not require the consent of Defendants because Defendants have not been served and therefore are not parties under the meaning of 28 U.S.C. § 636(c). See Ornelas v. De Frantz, 2000 WL 973684, *2, n.2 (N.D. Cal. 2000) (citing Neals v. Norwood, 59 F.3d 530, 532 (5th Cir. 1995) (magistrate judge had jurisdiction to dismiss prisoner’s civil rights action without consent of the defendants because the defendants had not been served yet and therefore were not parties)).

1 court may dismiss a case sua sponte if the court determines that the party applying for in forma
2 pauperis status has filed a frivolous action or that the action fails to state a claim on which relief
3 may be granted. 28 U.S.C. § 1915(e)(2); Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989).
4 Dismissal on these grounds is often made sua sponte prior to the issuance of process, so as to spare
5 prospective defendants the inconvenience and expense of answering such complaints. Neitzke v.
6 Williams, 490 U.S. 319, 324 (1989).

7 Plaintiff's amended complaint is still unintelligible and does not state any cognizable
8 claims against any Defendant. See Fed. R. Civ. P. 8(a)(2) (a complaint must contain a "short and
9 plain statement of the claim showing that the pleader is entitled to relief"). Leave to amend would
10 be futile, so the Court dismisses the amended complaint with prejudice and without leave to
11 amend.

12 **IT IS SO ORDERED.**

13 Dated: June 8, 2015

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16 ELIZABETH D. LAPORTE
17 United States Magistrate Judge
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